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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **(Central)**
10

11 D.N.,

12 Plaintiff,

13 vs.

14 RICHARD FISCHER; COUNTY OF
SAN DIEGO, a California government
15 entity; and DOES 1 to 10,

16 Defendants.
17

CASE NO.

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF CIVIL RIGHTS**
1. Violation Of Federal Civil Rights
2. Monell Municipal Liability
[42 U.S.C. § 1983]

18 Plaintiff D.N. alleges:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff D.N. is a resident of San Diego County, California; she is a woman.

21 2. Defendant Richard Fischer is, and at all times relevant to this complaint, was a sworn
22 peace officer, employed by defendant County of San Diego as a deputy sheriff with the San Diego
23 County Sheriff's Department ("SDCSD"). Fischer was specifically authorized by the County and
24 SDCSD to perform the duties and responsibilities of a deputy sheriff and all Fischer's acts were
25 under the color of law and in the course and scope of his duties as a deputy sheriff. Fischer is a
26 resident of the County of San Diego.

27 3. Defendant County of San Diego is, and at all times relevant to this complaint, was
28 a duly organized government entity, existing under the laws of the State of California and the

1 California Constitution. At all relevant times, the County was the employer of Fischer and
2 defendants Does 1 through 5 (Doe Deputies), who were SDCSD sheriff deputies, and defendants
3 Does 6 through 10 (Doe Supervisors), who were managers, supervisors and policymaking employees
4 of the County and the SDCSD.

5 4. At all times relevant to this complaint, defendants Does 1 through 10 were employees
6 and agents of the County and the SDCSD who were acting under color of law within the course and
7 scope of their respective duties as employees of the County and with complete authority and
8 ratification of their employer, the County.

9 5. The true names and capacities of Does 1 through 10, and the facts giving rise to their
10 liability, are unknown to plaintiff at this time.

11 6. Plaintiff is informed and believes that each of the Doe defendants is responsible in
12 some manner, either by act or omission, or otherwise, for the occurrences alleged in this complaint
13 and that plaintiff's harm was legally caused by conduct of the Does 1 through 10.

14 7. On or about May 4, 2016, a woman, referred to as K.P. because she is a victim of a
15 sexual assault, sent a written complaint to the Internal Affairs Unit of the SDCSD about the
16 circumstances of her arrest by Fischer on November 24, 2015. In her complaint, K.P. stated in
17 pertinent part, "[d]uring this incident, Deputy Fischer violated my rights in many ways. He started
18 my arrest by violating my Fourth Amendment right with both illegal search and seizure which led
19 to him confining me in handcuffs and then taking advantage of me by touching and rubbing me
20 sexually and inappropriately. . . ." K.P.'s complaint went on to say, "Although I haven't filed
21 anything through the court, I do think that something should be done. I have no idea how this
22 process works, but I am hoping mostly to find some peace of mind and attention brought on to the
23 disrespectful, unlawful and sexually demeaning things Officer Fischer shamelessly put me through."
24 K.P. closed her complaint stating, "[p]lease contact me for more details, it is not fair to be taken
25 advantage of and *he is a predator, not an officer.*"

26 8. Despite K.P. providing two contact numbers where she could be reached and her
27 email address in her complaint so SDCSD could contact her about the concerns she described, the
28 department neither contacted K.P. nor commenced an investigation into her claims about Fischer

1 until more than a year later. It was not until another of Fischer's many victims, K.H., hired a lawyer
2 after her repeated and unsuccessful attempts to convince SDCSD to investigate Fischer, that the
3 department finally began to investigate him.

4 9. On information and belief, the County, the SDCSD and Does 6 through 10 covered
5 up Fischer's criminal misconduct as to K.P. (and on information and belief, other persons) as part
6 of a long-standing unwritten department policy that encouraged a two-tiered system of justice — one
7 a system of unwritten privileges and immunities that applied to SDCSD deputies and supervisors and
8 other members of the "law enforcement community" and another system of codified laws and
9 regulations that applied to the ordinary citizens.

10 10. From at least 2015 to the present, and on information and belief, before 2015, the
11 County, the SDCSD, and its management and supervisory officials instituted a procedure for
12 investigating citizens' complaints of peace officer misconduct that was inadequate and designed to
13 not impartially investigate such complaints. Such policy or policies relegated citizens' complaints
14 of peace officer misconduct to second-class status where such complaints were either not
15 investigated at all, or received less than an impartial investigation by SDCSD and its supervisory
16 officials.

17 11. The County, the SDCSD and its supervisory officials had and have policies that have
18 continued through to the present of:

19 a. Failing and refusing to establish or enforce administrative procedures and
20 training to ensure safety of crime victims, detainees or arrestees;

21 b. Failing and refusing to adequately discipline peace officers, like Fischer and
22 others, for acts of abuse and misconduct, conduct that violated the SDCSD department procedures
23 or conduct unbecoming a peace officer;

24 c. Failing and refusing to impartially investigate citizen's complaints of alleged
25 abuse or misconduct by peace officers;

26 d. Covering up acts of peace officer misconduct or sanctioned a code of silence
27 by officers commonly referred to as the "Blue Wall," which resulted in complaints of officer
28 misconduct not being investigated or not being adequately and impartially investigated;

1 e. Failing and refusing to adequately supervise the actions of peace officers
2 under their control and guidance; and

3 f. Allowing the "unwritten policy" described in paragraph 9 to exist.

4 12. The County, the SDCSD and its supervisory officials from at least 2015 to the
5 present, and on information and belief, before 2015:

6 a. Knowingly, with gross negligence and with deliberate indifference of the
7 constitutional rights of citizens, maintained and permitted an official policy and custom of permitting
8 the occurrence of the types of wrongs alleged in this complaint and the complaints of at least ten
9 other women;

10 b. Maintained, fostered, condoned or else failed to correct wrongful conduct and,
11 through this, created an official policy practice or custom of permitting the occurrence of the types
12 of wrongs alleged in this complaint and the complaints of at least ten other women;

13 c. Maintained, fostered or condoned policies and customs, including but not
14 limited to, deliberate indifferent training of its peace officers about what constituted unreasonable
15 searches or seizures of citizens;

16 d. Maintained, fostered or condoned policies and customs that included the
17 express and/or tacit encouragement to its police officers to ignore unlawful conduct and/or to ratify
18 police misconduct by officers failing to intercede when unlawful conduct was underway and/or by
19 making material omissions in police reports to prevent detection of unlawful conduct; and

20 e. Maintained, fostered, condoned or failed to conduct adequate investigations
21 of peace officers' misconduct to prevent future misconduct from occurring.

22 **FIRST CAUSE OF ACTION**
23 **(Violation of Federal Civil Rights, 42 U.S.C. § 1983,**
24 **Against All Defendants)**

24 13. Plaintiff realleges paragraphs 1 through 12.

25 14. Plaintiff resides in Vista and is the on-site manager of an apartment complex. Around
26 October 12 or 13, 2016, plaintiff called the SDCSD dispatch about a man who was apparently
27 trespassing onto the complex near the swimming pool. Fischer, who was in uniform, armed and on
28 duty responded to plaintiff's call for service. He reported to plaintiff he had talked to the man who

1 did not look like he would be causing further problems and that the man had left. He promised
2 plaintiff he would come back in an hour or so and check on things.

3 15. Later that night, around midnight, on October 12 or 13, 2016, the man returned to the
4 apartments and started throwing patio furniture (a chair) into the swimming pool. Plaintiff called
5 the SDCSD dispatch again. This time, she asked to have the man removed. Plaintiff does not know
6 what happened, but the next morning, she found that her car had been vandalized with the tires
7 slashed and the paint scratched. She believes the man who had been around the swimming pool had
8 done this.

9 16. Around a week to ten days later, she believes around October 20 to 26, plaintiff called
10 the SDCSD and spoke with Fischer. She told him about what had happened after he had talked to
11 the man at the apartment — the man's throwing furniture into the pool and her car being vandalized,
12 she thought by that same man. Fischer said he was sorry and asked if he could come by her
13 apartment and apologize in person. Plaintiff agreed.

14 17. Fischer showed up at the apartment complex and plaintiff let him into her home
15 office. He immediately hugged plaintiff without her asking him. Fischer said he would watch out
16 for her. About an hour later, Fischer called plaintiff while she was out for a walk and said he was
17 at her place. When the plaintiff got home, Fischer was there and she let him in. He immediately
18 asked her if he could hug her again and he did. Only this time, Fischer embraced plaintiff very
19 tightly and rubbed her back and buttocks with his hands. Plaintiff told him you better go and walked
20 away from him. Fischer followed her to her room, but she told him you better go and pushed him
21 out of her home.

22 18. Fischer returned to plaintiff's apartment about a week later and asked if he could hug
23 her again. She said I have someplace to go. Fischer left. But, he came back to plaintiff's apartment
24 a fourth time. This time, plaintiff told Fischer she was seeing someone. He left and never returned.

25 19. Plaintiff has constitutional interests and rights under the Fourth and Fourteenth
26 Amendments to the U.S. Constitution and similar provisions of the California Constitution to be free
27 from an unreasonable seizure or detention of her person, sexual harassment or assault or a violation
28 of her person, as well as the right not to have her body violated by a peace officer. The acts of

1 Fischer and the County constituted a deprivation of or a violation of plaintiff's constitutional rights
2 under the U.S. and California Constitutions and, in turn, were a violation of 42 U.S.C. § 1983.

3 20. Fischer has sexually assaulted at least fourteen other women while in the course and
4 scope of his employment with the County and SDCSD and, on information and belief, other people
5 (like K.P. in 2016) have complained to the County and the SDCSD about sexual assaults or similar
6 misconduct by Fischer before his assault on plaintiff.

7 21. The violation of plaintiff's rights was in the form of a non-consensual touching sexual
8 assault by Fischer. The right violated by an such an assault has been described as the right to be
9 secure in one's person, and is grounded in the due process clause of the Fourteenth Amendment.

10 22. Fischer, the County, the SDCSD and Does 6 through 10 acted under color of law.

11 23. The failure of the County, the SDCSD and Does 6 through 10 to investigate,
12 discipline and supervise Fischer deprived plaintiff of her constitutional right to be free from sexual
13 assault. They failed to act to prevent Fischer from engaging in such conduct.

14 24. The County, the SDCSD and Does 6 through 10, as well as other County and SDCSD
15 management and supervisors, knew or should have known that Fischer was engaging in these acts
16 of misconduct and knew or reasonably should have known that Fischer's conduct would deprive
17 plaintiff of her constitutional rights.

18 25. The conduct of the County, the SDCSD and their management and supervisors was
19 so closely related to the deprivation of plaintiff's rights as to be the moving force that caused
20 Fischer's sexual assault on plaintiff.

21 26. As a legal result of the wrongful acts by Fischer, the County and Does 1 through 10,
22 plaintiff has suffered general damages of mental and emotional distress, humiliation, anxiety, fear
23 and physical pain and suffering.

24 27. Fischer's acts further constituted malice and oppression as defined in Civil Code §
25 3294, which entitles plaintiff to recover punitive damages from him.

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**SECOND CAUSE OF ACTION
(Monell Municipal Liability Against
Defendant County Of San Diego)**

28. Plaintiff realleges paragraphs 1 through 25.

29. The County and the SDCSD have failed to adequately investigate complaints about Fischer, have failed to discipline Fischer, and have failed to adequately supervise him.

30. The County and the SDCSD have a policy of employing and retaining as sheriff's deputies, individuals, including Fischer, with dangerous propensities for abusing their authority, sexually assaulting women and endangering the public. The County, the SDCSD and Does 6 through 10 knew or reasonably should have known Fischer had dangerous propensities for abusing his authority and sexually assaulting women.

31. The failure to investigate, discipline, and supervise by the County and the SDCSD management and supervisory employees, including Does 6 through 10, deprived plaintiff of her particular rights under the U. S. And California constitutions, including but not limited to her right to be free from sexual assault.

32. The County's and SDCSD's employees acted under color of law.

33. The investigatory and disciplinary policies of the County and the SDCSD were not adequate to prevent violations of law by its employees, including Fischer.

34. The County, the SDCSD, Does 6 through 10 and other management and supervisory employees knew or should have known that failing to adequately investigate, discipline and supervise deputy sheriff's, including Fischer, made it highly predictable that he and other deputies would engage in conduct, including sexual assault, that would deprive persons such as plaintiff of their constitutional rights.

35. Plaintiff realleges paragraph 26.

REQUEST FOR RELIEF

THEREFORE, plaintiff D.N. requests a judgment against defendants Richard Fischer, the County of San Diego and Does 1 through 10 as follows:

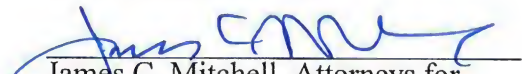
- a. General and special damages according to proof;
- b. Punitive damages against Fischer;

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- c. Attorneys' fees and expert witness fees under 42 U.S.C. § 1988;
- d. Costs of suit; and
- e. Any other proper relief.

Date: February 28, 2018

The Gilleon Law Firm


James C. Mitchell, Attorneys for
Plaintiff D.N.